SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

October Term, 1973
No. 73-952

SILAS ECTOR,

Petitioner,

vs.

CITY OF TORRANCE, a municipal corporation; EDWARD J. FERRARO, City Manager, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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BRIEF FOR RESPONDENTS IN OPPOSITION.

Respondents respectfully request that this Honorable Court deny the Petition for a Writ of Certiorari filed to review the unanimous decision of the Supreme Court of California in the case of *Ector v. City of Torrance, et al.* decided October 2, 1973.

Opinions Below

The judgment and opinion of the Los Angeles Superior Court is unpublished. A copy is appended to the Petition for a Writ of Certiorari herein as Appendix "A". The opinion was delivered on July 26, 1971, Dkt. No. 997818. The opinion of the California Court of Appeal, Second Appellate District, is filed with said

Petition as Appendix "B". It was decided on October 26, 1972 and, although it is not officially reported, an unofficial report of the decision may be found at 104 Cal.Rptr. 594 (1972). The opinion of the California Supreme Court is reported at 10 Cal.3d 129, 109 Cal.Rptr. 849, 514 P.2d 433 (1973). A correct copy thereof is attached to the Petition as Appendix "C".

Jurisdiction

Respondents do not question the jurisdiction of this Court as the same is set forth in the Petition for a Writ of Certiorari herein.

Question Presented

Whether a municipality is barred from requiring its employees to become residents within six months after the date of their employment.

Ordinance

Torrance, California City Charter, Article VII, Section 6:

> "All officers and employees of the City of Torrance shall be or become residents of said City within six (6) months after their appointment or date of employment; provided, however, that as to appointive officers or employees having technical, special or professional knowledge or abilities, the City Council may waive the residence requirements. No officer or employee may be appointed permanently in the classified service unless and until he has become a resident of the City."

Statement of the Case

Petitioner's statement of the case is substantially correct.

REASONS FOR NOT GRANTING THE WRIT.

I.

The Decision of the California Supreme Court in This Case Is Consistent With Every Ruling of This Court Relating to the Issue of the Constitutionality of Employee Residency Requirements.

A. This Court on Two Recent Occasions Has Refused to Overturn Lower Court Decisions Upholding Local Requirements of Employee Residency.

The instant petition marks the third time in the last five years that this Honorable Court has been requested to find that municipal employee residency requirements are unconstitutional, but has declined to do so. Each of the two prior cases, like the one at bar, arose as a petition to reverse a ruling of a State Supreme Court which had found such a requirement constitutional. In each, the argument that the lower court had erred in using the "rational relationship test", rather than the "compelling interest test", was rejected.

Certiorari was denied in *Salt Lake City Firefighters Local 1645 v. Salt Lake City,* 22 Utah 2d 115, 449 P.2d 239, cert. den. 395 U.S. 906, 89 S.Ct. 1748, 23 L.Ed. 220 (1969). There, the Supreme Court of Utah, in a unanimous decision, found it "necessary and proper" for the city to require residency of its employees. Petitioner, the Firefighters Union, sought certiorari on the grounds that the residency requirement deprived them of fundamental rights including equal protection of the laws. The Union, like the Petitioner here, argued that the court below had committed error in using the "reasonable relationship test" rather than the "compelling state interest test" to determine constitutionality. This Court denied their petition for certiorari and thereby upheld the subject requirement.

The second occasion where this Court upheld the constitutional validity of municipal residency requirements was during the 1971-1972 term in the case of *Detroit Police Officers Association v. City of Detroit,* 385 Mich. 519, 190 N.W.2d 97 (1971), affd. 405 U.S. 950, 92 S.Ct. 1173, 31 L.Ed.2d 227 (1972). There, appellant police union made arguments similar to those in *Firefighters, supra,* and Petitioner herein. The United States Supreme Court ordered the appeal dismissed for "want of a substantial Federal question."[1]

B. The Decision of the California Supreme Court Below Is Consistent With United States Supreme Court Cases Cited by Petitioner.

Petitioner cites *Shapiro v. Thompson,* 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) and *Dunn v. Blumstein,* 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), in support of his contention that Respondent City's municipal employee residency requirement is unconstitutional. However, Petitioner misconstrues the holding of these cases. A reading of each of these cases demonstrates not only that the decision involved the constitutionality of residency requirements of a wholly different type than the one at bar, but also that it expressly affirmed the constitutionality of the specific type of requirement now at issue.

Probably most central to Petitioner's cause is *Shapiro v. Thompson, supra.* Petitioner cites it for the proposition that residency requirements inhibit migration and hence are unconstitutional unless supported by some compelling state interest. That case involved a "*dura-*

[1]See also *Town of Vanden Broek v. Reitz,* 406 U.S. 902, 92 S.Ct. 1608, 31 L.Ed.2d 813 (1972).

tional", that is, a "waiting period" requirement. There, District of Columbia law provided that in order to be eligible for welfare benefits an applicant must be a resident for one year prior thereto. The vice of such a waiting period requirement is obvious. Indigents who moved into the District were deprived of welfare benefits until they had been there long enough to satisfy the District's waiting period requirement.

However, a durational requirement as encountered in *Shapiro* is diametrically different from the requirement now at issue. Respondents' employee residency rule does not provide for any waiting period in order to be eligible for municipal employment. One need not even be a resident of this city at the time he is employed. Rather, as Mr. Justice Mosk succinctly pointed out in the California Supreme Court decision, "Indeed, the provision here challenged does not even require immediate residence, but gives each employee six months to 'become' a resident of respondent city—i.e., the exact converse of a waiting period." 10 Cal.3d 129 at 136, 109 Cal.Rptr. 849 at 853, 514 P.2d 433 at 437.

No individual, let alone any suspect class, is discouraged in any way from any migration or travel into the Respondent city. There is no waiting period in order to be eligible for public employment. Instead, the opposite is true. Every employee is given six months to decide whether he wishes to remain in the employment of the Respondent. Should he desire to do so, only then must he move into the city.

It should be noted that *Shapiro* expressly recognized the constitutionality of "factual" residency requirements such as the one at bar. The Court left no

doubt that it is constitutional for a state to require that an applicant for welfare be a resident of a state in order to obtain benefits from it. 394 U.S. at 636, 89 S.Ct. at 1332, 22 L.Ed.2d at 616. Such result is not only reasonable but is compelled by logic. If Petitioner's construction of *Shapiro* were true, and "factual" residency requirements were unconstitutional, a person living in South Carolina could apply for and receive welfare benefits from Connecticut regardless of the fact that he was a resident of South Carolina and had never been to Connecticut—an absurd result.

Dunn v. Blumstein, supra, is not helpful to Petitioner's cause for similar reasons. *Dunn,* like *Shapiro,* involved a "durational" or "waiting period" requirement. There, Tennessee law imposed a requirement that, as a condition precedent to the right of registering to vote, an individual must have continuously resided for one year in the state and three months in the same county. This Court, in a 6-1 decision, held that Tennessee's durational residency requirement was longer than the amount of time necessary to permit the state to complete the administrative tasks needed to prevent fraud. Thus it deprived individuals of their franchise to vote without a compelling state interest.

There is no language in *Dunn* to the effect that the requirement of actual residence in a community is an unconstitutional condition to voting there. To the contrary, it is well established that the opposite is true. As Justice Mosk pointed out, "[A] state cannot require an unreasonable period of residence as a precondition to the exercise of the right of suffrage or candidacy for public office, but it can require actual residence for such at the time of voting." 10 Cal.3d 129 at 136, 109 Cal.Rptr. 849 at 853, 514 P.2d 433 at

437. See also *Thompson v. Mellon,* 9 Cal.3d 96, 107 Cal.Rptr. 20, 507 P.2d 628 (1973).

Petitioner attempts to refute Justice Mosk's distinction between "factual" and "waiting period" requirements by alleging that, be the condition precedent or subsequent, a burden is nonetheless placed upon travel. (Petition, p. 20.) Such an argument is specious. In the case now at bench no social or economic burden is placed on any aspect of travel; no one is picked out for special treatment; there is no discriminatory motive; no one is punished therefor. The City of Torrance only requires that within six months of being hired an employee must become a resident of the community.

C. The Cases Involving Municipal Residency Requirements Have Uniformly Upheld Their Constitutionality.

Despite the arguments in Petitioner's brief, the numerous decisions which have already been rendered relative to municipal employee residency requirements have uniformly upheld their validity. *Detroit Police Officers Assn. v. City of Detroit, supra; Hattiesburg Firefighters Local 184 v. City of Hattiesburg,* 263 So. 2d 767 (Miss. 1972); *Williams v. Civil Service Commission of City of Detroit,* 383 Mich. 507, 176 N.W. 2d 593 (1970); *Mercadante v. City of Paterson,* 111 N.J.Super. 35, 266 A.2d 611 (1970), affd. per curiam 58 N.J. 112, 275 A.2d 440 (1971); *Salt Lake City Fire Fighters Local 1645 v. Salt Lake City, supra; Marabuto v. Town of Emeryville,* 183 Cal.App.2d 406, 6 Cal.Rptr. 690 (1960); *Kennedy v. City of Newark,* 29 N.J. 178, 148 A.2d 473 (1959); and *Ahern v. Murphy,* 457 F.2d 1363 (CCA 7, 1972), all cited by Petitioner, expressly sustained such a requirement

against a constitutional challenge such as that now at bar.

King v. New Rochelle Municipal Housing Authority, 442 F.2d 646 (CCA 2, 1971), and *Cole v. Housing Authority of City of Newport*, 435 F.2d 807 (CCA 1, 1970), on the other hand, have no application to this case. Both of these cases involved "waiting period" requirements (as in *Shapiro* and *Blumstein*) as a qualification for public housing, an issue clearly not relevant here. In *King*, the expansive language was limited by the regulatory context in which the case arose. In *Cole*, on the other hand, the Court did not even discuss the legal issue involved in the intrastate aspect of the case.

Petitioner has also cited *Krzewinski v. Kugler*, 338 F.Supp. 492 (D.C.N.J. 1972), and *Donnelly v. City of Manchester*, 274 A.2d 789 (N.H. 1971) in support of his position. It should be noted that *Krzewinski* upheld a "factual" residency requirement. However, even if both these cases could be construed as supporting Petitioner's position (which they do not), they still exemplify a failure to discern the fundamental distinction between "waiting period" requirements and the "factual" type now at bench. 10 Cal.3d 129 at 136, 109 Cal.Rptr. 849 at 853, 514 P.2d 433 at 437. As Justice Mosk stated: "These distinctions were apparently not perceived in the two cases contrary to our conclusion on this point." Footnote 8: 10 Cal.3d 129 at 136, 109 Cal.Rptr. 849 at 853, 514 P.2d 433 at 437.

A view consistent with the California Supreme Court is that of the Court of Appeal of the State of Michigan expressed in *Park v. Lansing School District*, 32 Mich.

App. 752, 189 N.W.2d 60 (1971), decided two months subsequent to *Donnelly*. In *Park*, persons holding administrative positions in the school district (which operated the City's library system) sued to contest the requirement that all school personnel live within the district. The Court of Appeal held the requirement constitutional, finding that the question of the beneficial effect of employee residence requirements on public services was reasonably debatable.

II.

The Right to Engage in Suburban Travel Is Not a Fundamental Interest Approaching Equal Protection in Municipal Residency Cases.

The contention that battling intrastate traffic (especially in these times of gasoline and energy shortages) is a fundamental interest approaching constitutional dimension or is a right of national citizenship was realistically discussed by Mr. Justice Mosk in the case at bench:

> "First it is said that the residence requirement impinges on appellant's 'right to travel.' The contention is not persuasive. Viewed realistically, appellant is claiming the right to 'travel' between his home and his place of employment each morning and evening of each working day—in other words, a 'right to commute.' We cannot discern such a right in the United States Supreme Court decisions relied on by appellant. Clearly the cultural and educational rewards of international travel (Kent v. Dulles (1958) 357 U.S. 116, 126-127) are not reaped from routine daily trips of a harassed metropolitan commuter. Nor have such trips any relevance whatever to the right to mi-

grate among the several states for the purpose of starting a new life without fear of being denied welfare if a job is not immediately available. (Shapiro v. Thompson (1969) 394 U.S. 618), or to the right to move within the confines of a state for the same purpose without fear of being denied prompt access to public housing facilities (King v. New Rochelle Municipal Housing Authority (2d Cir. 1971) 442 F.2d 646; Cole v. Housing Authority of City of Newport (1st Cir. 1970) 435 F. 2d 807)." 10 Cal.3d 129 at 135, 109 Cal.Rptr. 849 at 852, 514 P.2d 433 at 436.

III.

The Enactment of an Employee Residency Requirement Constitutes a Valid Exercise of Municipal Respondent's Police Power and General Home Rule Power as Granted to It by the California Constitution.

Torrance's residency requirement was enacted for far more significant reasons than, as Petitioner contends, to protect the public purse. (Petition, p. 20.) Nowhere in the findings of any court is such rationale postulated as the sole justification therefor. In fact, as Petitioner admits at page 5 of his petition, the trial court ruled that the "requirement and restrictions of residence for City's municipal employees is reasonable and rational and furthers the public welfare of the City."

This important facet of the case was argued in considerable detail before the California Supreme Court not only by Respondents, but by the *amici curiae* cities of San Francisco, Oakland and Los Angeles. All argued that the imposition of an employee residency re-

quirement as a qualification for employment was essential, *inter alia,* to preserve the socio-economic integrity of our inner cities, foster the quality of government, reduce personnel problems and enable local government to respond to emergency situations.

The California Supreme Court recognized these purposes when it stated:

> "Among the governmental purposes cited in these decisions or now urged by amici curiae are the promotion of ethnic balance in the community; reduction in high unemployment rates of inner-city minority groups; improvement of relations between such groups and city employees; enhancement of the quality of employee performance by greater personal knowledge of the city's conditions and by a feeling of greater personal stake in the city's progress; diminution of absenteeism and tardiness among municipal personnel; ready availability of trained manpower in emergency situations; and the general economic benefits flowing from local expenditure of employees' salaries. We cannot say that one or more of these goals is not a legitimate state purpose rationally promoted by the municipal employee residence requirement here in issue." 10 Cal.3d 129 at 135, 109 Cal.Rptr. 849 at 852, 514 P.2d 433 at 436.

The philosphy of the California Supreme Court was expressed in the opinion of the New Jersey Federal District Court in *Krzewinski, supra.* To paraphrase the Court in *Krzewinski:* reasonable men could conclude that a total disengagement between work hours and personal life could detrimentally affect an employee's attitude toward the community and the people he or

she serves. If, with each nocturnal escape, the employee manages to leave city problems behind, it may be just a matter of time before the employee develops an unconscious disdain for the city and its residents. 338 F.Supp. at 499.

In light of such rationale, the residency requirement as a condition of employment is not only a valid exercise of the City of Torrance's police power, but as a qualification of employment it is expressly authorized by the general home rule provision of the California Constitution, Article V, Section 3(b). As the California Supreme Court stated:

> "To begin with, this is not the usual case in which the courts are without constitutional guidance in resolving the question whether a subject of local regulation is a 'municipal affair' and hence within the general home rule power vested in charter cities by subdivision (a) of section 5, article XI, of the Constitution.[2] (See, *e.g.*, Bishop v. City of San Jose (1969) 1 Cal.3d 56, 62, and cases cited.) Here we have the benefit of a specific directive in subdivision (b) of that section, which grants 'plenary authority' to charter cites to prescribe in their charters the 'qualifications' of their employees.[3] A requirement that a

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[2]The cited provision reads:

"It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith."

[3]The cited provision reads:

"It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution,

municipal employee reside within the borders of the city that hires and pays him has long been deemed a 'qualification' for the employment in question, similar in this regard to minimum standards of age, health, education, experience, or performance in civil service examinations. (Marabuto v. Town of Emeryville (1960) 183 Cal.App.2d 406, 410-411; Galli v. Brown (1952) 110 Cal. App.2d 764, 775; Dierssen v. Civil Service Commission (1941) 43 Cal.App.2d 53, 57; cf. Ball v. Public Welfare Department (1957) 151 Cal.App. 2d 784, 788; Denton v. City & County of San Francisco (1953) 119 Cal.App.2d 369, 375.)[4]

It follows that a statute purporting to prohibit charter cities from prescribing municipal employee residence requirements in their charters would contravene that explicit constitutional authorization." 10 Cal.3d 129 at 132-133, 109 Cal.Rptr. 849 at 840-851, 514 P.2d 434-435.

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and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) *plenary authority is hereby granted,* subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, *qualifications,* tenure of office and removal of such deputies, clerks and other employees." (Italics added.)

Until the 1970 revision of this portion of the Constitution, similar language appeared in former article XI, section 8½.

[4]The rule was applied more than half a century ago in Hellyer v. Prendergast (N.Y. 1917) 162 N.Y.S. 788, 790.

Conclusion

For the foregoing reasons the Petition for a Writ of Certiorari should be denied.

January 18, 1974.

Respectfully submitted,

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